

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	
LBU FRANCHISES CORPORATION,	§	Case No. 18-36106
	§	Chapter 11
DEBTOR-IN-POSSESSION.	§	

**DEBTOR'S EMERGENCY MOTION FOR USE OF CASH COLLATERAL**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.**

**DEBTOR REQUESTS THE COURT HEAR THE MOTION ON NOVEMBER 5, 2018 OR AS SOON AS PRACTICALLY POSSIBLE.**

**TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:**

COMES NOW, LBU Franchises Corporation ("Debtor"), with its Emergency Motion for Use of Cash Collateral ("Motion"), pursuant to 11 U.S.C. §§ 361(2) and 363(c)(2), and in support thereof would respectfully show unto this Court as follows:

### **BASIS FOR EMERGENCY CONSIDERATION**

1. Debtor respectfully requests the Court consider this Motion on an emergency basis pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2). Debtor believes that an orderly transition into bankruptcy is crucial to the viability its operations and any delay in obtaining the use of cash collateral would leave Debtor unable to meet important obligations to employees and vendors. If Debtor does not meet those obligations, it could be forced to close, which would cause likely foreclose its ability to reorganize and pay its creditors.

### **PARTIES**

2. Debtor may be served through its President, David Bekker.

3. There are six creditors that claim liens on Debtor's assets by UCC-1 Financing Statements. One of the financing statements was filed by Corporation Service Company, as representative for an undisclosed party. Below is a list of all parties that have filed UCC-1 Financing Statements and those that Debtor believes may have filed UCC-1 Financing Statements.

#### **a. Known Lienholders**

- i. Internal Revenue Service ("IRS"), which may be served at P.O. Box 7346, Philadelphia, Pennsylvania 19101.
- ii. Ace Funding Source LLC ("Ace"), which may be served through its registered agent Registered Agents, Inc., at 90 State Street, Suite 700, Office 40, Albany, New York 12207, with a copy to its President at 366 North Broadway, Jericho, New York 11753.
- iii. Acme Company (believed to be Mantis Funding, LLC ("Mantis")), which can be served through its registered agent Business Filings Incorporated at 187 Wolf Road, Suite 101, Albany, New York 12205

with a copy to its President at 64 Beaver Street Suite #344, New York, New York 10004.

- iv. Mr. Advance LLC (“Advance”), which may be served by mailing a copy to its President at 35-12 19th Avenue, 3W, Astoria, New York 11105 *and* 31-10 37th Avenue, #202, Long Island City, New York 11101.
- v. CFG Merchant Solutions LLC (“CFG”), which may be served through its registered agent Corporation Service Company at 80 State Street, Albany, New York 12207, with a copy to its President at 2017 Route 17 North, Suite 805, Rutherford, New Jersey 07070.

**b. Other Potential Lienholders**

- i. Midnight Capital LLC (“Midnight”), which may be served through its registered agent USA Corp NY LLC at 325 Division Avenue, Suite 201, Brooklyn, New York 11211, with a copy to its President at 128 32nd Street, Brooklyn, New York 11232.
- ii. Yellowstone Capital LLC (“Yellowstone”), which may be served through its registered agent Business Filings Incorporated at 187 Wolf Road, Suite 101, Albany, New York 12205, with a copy to its President at One Evertrust Plaza, Suite 1401, Jersey City, New Jersey 07302.
- iii. Yes Capital Group (“Yes”), which may be served through its registered agent The Limited Liability Company, 1233 48th Street, Brooklyn, New York 11219.

**JURISDICTION AND VENUE**

- 4. The Court has jurisdiction pursuant to 28 U.S.C. § 1334, venue is appropriate

pursuant to 28 U.S.C. § 1408, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).

#### **NOTICE**

5. Adequate notice of the Motion has been given to prevent immediate and irreparable harm consistent with Federal Rule of Bankruptcy Procedure 4001(b) and Local Bankruptcy Rule 4002-1(i).

#### **FACTS**

6. Debtor was formed in the late 1980's. Debtor is in good standing with the Secretary of the State of Texas.

7. Debtor is in the business of selling lightbulbs to primarily retail customers.

8. On November 2, 2018, Debtor filed a voluntary Chapter 11 petition to protect its business as an ongoing concern. No Trustee has been appointed and the Debtor is operating as a Debtor-in-Possession.

#### **PRE-PETITION LIENS**

9. Debtor has engaged in numerous merchant agreements with each the parties listed in paragraph 3, excluding the IRS.

10. In each of these merchant agreements, Debtor agreed to sell its future receivables to the purported lienholders. As part of the sale, Debtor granted each of the lienholders security interests.

11. A summary of the lienholders and their collateral is shown below:

Name	Price	Purchased	Owed <sup>1</sup>	Collateral	Date Sold	UCC Recorded <sup>2</sup>
Ace (Ex. C)	\$64,000	\$95,936	\$47,217	Accounts, Chattel Paper, Documents, Equipment, General Intangibles, Instruments, Inventory	6/27/18	7/13/18
Mantis	Unknown	Unknown	\$624	Unknown	Unknown	7/26/18
Advance (Ex. D)	\$12,000	\$17,880	≈\$5,000	Accounts, Chattel Paper, Documents, Equipment, General Intangibles, Instruments, Inventory	6/27/18	9/28/18
CFG (Ex. E)	\$15,000	\$22,485	\$3,005.58	Accounts	7/13/18	7/19/18
Midnight (Ex. F)	\$52,623	\$75,778	\$35,519	Unknown	6/6/18	Unknown
Yellowstone (Ex. G)	\$45,000	\$65,655	\$36,310	Accounts, Chattel Paper, Documents, Equipment, General Intangibles, Instruments, Inventory	6/26/18	Unknown
Yes (Ex. H)	\$124,000	\$195,776	≈\$140,000	All Assets	9/13/18 10/15/18 10/19/18	Unknown

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<sup>1</sup> As claimed by creditor.

<sup>2</sup> Some of these UCC-1 filings may constitute voidable preferences under 11 U.S.C. § 547.

12. Debtor believes the remaining lien arises from Debtor's failure to pay 941 taxes from the 4<sup>th</sup> quarter of 2016 through the 1<sup>st</sup> quarter of 2018. Debtor believes the IRS' claim is \$101,497.52. Prior to filing, Debtor was negotiating a payment plan with the IRS.

#### **CASH COLLATERAL**

13. Debtor requires the emergency use of cash collateral in the amount of \$66,340 for the next twenty (20) days to meet regular expenses needed to continue its business operations. Most of these funds are for payroll and vendor payments. The anticipated income for this period is \$75,000. A copy of the anticipated budget for the next 20 days is attached as Exhibit "A" for reference.

14. In addition, Debtor requires the use of cash collateral in the amount of \$94,866 monthly. The anticipated monthly income is \$110,000. A copy of the monthly budget is attached as Exhibit "B" for reference.

15. Without the use of cash collateral, Debtor will be unable to retain or pay employees, maintain its assets, pay payroll taxes, suppliers, overhead, and other expenses necessary for its reorganization.

16. As adequate protection for the use of cash collateral, Debtor shall agree, with Court approval, to grant replacement liens to all lienholders equal to those validly held pre-petition.

17. Additionally, Debtor shall make an adequate protection payment of \$7,500 on the 1st of each month, with each party listed in paragraph 3 receiving a pro-rata share according to the amount owed in paragraph 11. Each party's proposed monthly distribution is listed in Exhibit "B".

18. The adequate protection payment shall be applied to the amount owed the creditor. Any payments made in excess of a creditor's approved claim or to an unsecured party may be subject to turnover in the future under 11 U.S.C. § 549(a)(2)(A).

**PRAYER FOR RELIEF**

WHEREFORE, Debtor prays the Court conduct an Emergency Hearing on the Emergency Motion to Use Cash Collateral, enter an Order for Emergency Use of the Cash Collateral for the Period of November 2, 2018 through November 22, 2018, set a final hearing on the Motion, enter an Order for Use of Cash Collateral after the hearing, and for such other and further relief, at law and in equity, as the Court deems just.

Dated: November 2, 2018

Respectfully submitted,

The Gerger Law Firm, PLLC

By: /s/ Alan S. Gerger

Alan S. Gerger

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Houston, Texas 77098

Telephone: 713-300-1430

Facsimile: 888-317-0281

ATTORNEYS FOR DEBTOR

**CERTIFICATE OF ACCURACY**

This is to certify that the information in this emergency motion is accurate.

By: /s/ Alan S. Gerger

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon those shown below by the method indicated and upon the attached service list by United States first class mail on November 2, 2018:

Office of the U.S. Trustee  
515 Rusk Avenue, Ste. 3516  
Houston, Texas 77002  
*Via ECF*

Corporation Service Company, As Representative  
P.O. Box 2576  
Springfield, Illinois 62708  
*Via First Class Mail*

Ace Funding Source LLC  
c/o Registered Agents, Inc.  
90 State Street, Suite 700, Office 40  
Albany, New York 12207  
*Via First Class Mail*

Ace Funding Source LLC  
President  
366 North Broadway  
Jericho, New York 11753.  
*Via First Class Mail*

Acme Company  
64 Beaver Street Suite #344  
New York, New York 10004  
*Via First Class Mail*

Ace Fundings Source LLC  
Henry Guttman  
hg@acefunding.llc.com  
*Via E-mail*

Mantis Funding, LLC  
c/o Business Filings Incorporated  
187 Wolf Road, Suite 101  
Albany, New York 12205  
*Via First Class Mail*

Mantis Funding, LLC



President  
64 Beaver Street Suite #344  
New York, New York 10004.  
*Via First Class Mail*

Mantis Funding, LLC  
c/o Mitchell Shapiro, Esq.  
mitch@mantisfunding.com  
*Via E-mail*

Mr. Advance LLC  
President  
35-12 19th Avenue, 3W  
Astoria, New York 11105  
*Via First Class Mail*

Mr. Advance LLC  
President  
31-10 37th Avenue, #202  
Long Island City, New York 11101  
*Via First Class Mail*

Mr. Advance LLC  
Michael Kay  
michael@citicapitalllc.com  
*Via E-mail*

CFG Merchant Solutions LLC  
c/o Corporation Service Company  
80 State Street  
Albany, New York 12207  
*Via First Class Mail*

CFG Merchant Solutions LLC  
President  
2017 Route 17 North, Suite 805  
Rutherford, New Jersey 07070.  
*Via First Class Mail*

CFG Merchant Solutions LLC  
Naomi Garcia  
ngarcia@cfgms.com

Midnight Capital, LLC  
c/o USA Corp NY LLC  
325 Division Avenue, Suite 201

Brooklyn, New York 11211  
*Via First Class Mail*

Midnight Capital, LLC  
President  
128 32nd Street  
Brooklyn, New York 11232  
*Via First Class Mail*

Midnight Capital, LLC  
Galina Reznick  
galina@atlasadvancedfunding.com  
*Via E-mail*

Yellowstone Capital  
c/o Business Filings Incorporated  
187 Wolf Road, Suite 101  
Albany, New York 12205  
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Yellowstone Capital  
President  
One Evertrust Plaza, Suite 1401  
Jersey City, New Jersey 07302  
*Via First Class Mail*

Yellowstone Capital  
Jim McNeil  
jmcneil@yellowstonecapllc.com  
*Via E-mail*

Yes Capital Group  
c/o The Limited Liability Company  
1233 48th Street  
Brooklyn, New York 11219  
*Via First Class Mail*

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, Pennsylvania 19101  
*Via First Class Mail*

Joe Lieberman, Esq.  
joe@liebermanlegal.com  
*Via E-mail*

By: /s/ Alan S. Gerger  
Alan S. Gerger

Ace Funding Source, LLC 90 State Street, Suite 700 Office 40 Albany, NY 12207	CNA 3003 Washington Blvd. Arlington, VA 22201	Satco 2000 Valwood Pkwy Dallas, TX 75234
American Express 200 Vesey Street New York, NY 10285	CPI Advanced, Inc. 14708 Central Ave Chino, CA 91710	Southland Hardware 1822 Westheimer Rd. Houston, TX 77098
American Lighting 15810 Park Ten Place, Suite 380 Houston, TX 77084	Fanlight Corporation 2000 S. Grove Ave B. Ontario, CA 91761	Texas Comptroller 1919 N Loop W #640 Houston, TX 77008
Aspen Brands 1305 E Wakeham Ave Santa Ana, CA 92705	Fulham Company Inc. 12705 Van Ness Ave Hawthorne, CA 90250	TXU P.O. Box 650700 Dallas, TX 75265-0700
AT&T P.O. Box 10330 Fort Wayne, IN 46851	Harris County Tax Office 1001 Preston St. Houston, TX 77002	UPS Freight 1000 Semmes Avenue P.O. Box 1216 Richmond, VA 23218-1216
BGW Properties 5100 San Felipe Street 381E Houston, TX 77056	House of Troy 902 Silver Ridge R.d Hyde Park, VT 05655	Yellowstone Capital, LLC 30 Broad Street, Suite 1462 New York, NY 10004
Broadstreet 1523 Corp. 1523 E. 4th Str. Brooklyn, NY 11230	Internal Revenue Service Special Procedures Staff-Insolvent P.O. Box 7346 Philadelphia, PA 19101-7346	YES Capital Group 1233 48th Street Brooklyn, NY 11219
CAL Lighting 3625 E Philadelphia St Ontario, CA 91761	Midnight Advance, LLC 1080 McDonald Avenue Brooklyn, NY 11230	
CFG Merchant Solutions, LLC 180 Maiden Lane, Floor 15 New York, NY 10038	Mr. Advance, LLC 3110 37th Avenue, #202 Long Island City, NY 11101	
City of Houston P.O. Box 1562 Houston, TX 77251	Sandstone Equity Partners 140 Broadway, 46th Floor New York City, NY 10005	